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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA

4 ImageKeeper LLC,

5 Plaintiff

6 v.

7 Wright National Flood Insurance  
8 Services LLC, et al.,

9 Defendants

Case No. 2:20-cv-01470-CDS-NJK

Order Regarding Motions to Seal

[ECF Nos. 315, 318, 322, 328, 331, 335]

10 Before the court are several motions to seal various documents associated with  
11 defendants' summary judgment motions. ECF Nos. 315, 318, 322, 328, 331, 335. Defendant Evoke  
12 Technologies Private Limited seeks to redact portions of its motion for summary judgment and  
13 various portions of related declarations and exhibits as well as portions of its reply to the same  
14 and to file redacted versions. ECF No. 315; ECF No. 335. Defendant Wright National Flood  
15 Insurance Services, LLC seeks to redact portions of its motion for summary judgment and  
16 various portions of related declarations and exhibits as well as portions of its reply to the same.  
17 ECF Nos. 318; 331. Plaintiff ImageKeeper LLC seeks to redact portions of its opposition to  
18 Evoke's motion for summary judgment and Exhibits N-BB and DD-FF attached thereto in  
19 support. ECF No. 328. ImageKeeper also seeks to redact portions of its opposition to Wright's  
20 motion for summary judgment and Exhibits A-M attached thereto in support. ECF No. 322. For  
21 the following reasons, I grant Evoke's motions to seal (ECF Nos. 315, 335) and deny Wright's  
22 and ImageKeeper's motions to seal (ECF Nos. 318, 322, 328, 331).

23 **I. Legal standard**

24 In the Ninth Circuit there is "a strong presumption in favor of access to court records."  
25 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). The public interest in full  
26 disclosure of documents is grounded upon "ensuring the 'public's understanding of the judicial

1 process and of significant public events.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179  
2 (9th Cir. 2006) (citations omitted). The Ninth Circuit has made clear that the sealing of entire  
3 documents is improper when confidential information can be redacted to leave meaningful  
4 information available to the public. *Foltz*, 331 F.3d at 1137. To the extent that a sealing order is  
5 permitted, it must be narrowly tailored. *See, e.g., Press-Enterprise Co. v. Superior Court of California*,  
6 464 U.S. 501, 513 (1984) (sealing orders should be “limited to information that [is] actually  
7 sensitive”). Thus, only the portions of a filing that contain specific reference to confidential  
8 documents or information, and exhibits that contain such confidential information, may be filed  
9 under seal. *In re Roman Catholic Archbishop of Portland*, 661 F.3d 417, 425 (9th Cir. 2011). Trade  
10 secrets and proprietary confidential business information are routinely considered “compelling  
11 reasons” to seal. *See, e.g., In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (finding sealable  
12 “business information that might harm a litigant’s competitive standing”); *Jam Cellars, Inc. v. Wine*  
13 *Grp. LLC*, 2020 WL 5576346, at \*2 (N.D. Cal. Sept. 17, 2020) (finding compelling reasons for  
14 “confidential business and proprietary information relating to the operations of both Plaintiff  
15 and Defendant”).

16 “[C]ompelling reasons” must be shown to seal judicial records attached to a dispositive  
17 motion. *Foltz*, 331 F.3d at 1136. Under this stringent standard, a court may seal records only when  
18 it finds “a compelling reason and articulate[s] the factual basis for its ruling, without relying on  
19 hypothesis or conjecture.” *Kamakana*, 447 F.3d at 1179 (internal quotation marks and citation  
20 omitted). Therefore, the party seeking to have the document sealed must present “articulable  
21 facts” identifying the interests that favor secrecy and show that these specific interests overcome  
22 the presumption of access because they outweigh the public’s interest in understanding the  
23 judicial process. *Id.* at 1180. “Any request to seal must also be ‘narrowly tailored’ to remove from  
24 the public sphere only material that warrants secrecy.” *Harper v. Nev. Prop. I*, 552 F. Supp. 3d 1033,  
25 1040–41 (D. Nev. 2021) (citing *Press-Enterprise*, 464 U.S. at 513).

1 **II. Discussion**

2 **A. Evoke's Motions to Seal (ECF Nos. 315, 335)**

3 Evoke requests that the court seal parts of its summary judgment motion (ECF No. 314)  
 4 and several associated exhibits, as well as portions of its reply (ECF No. 336) because there is a  
 5 protective order governing discovery material in this case under which ImageKeeper has broadly  
 6 claimed confidentiality, sensitivity, or trade secret status. ECF No. 315 at 2 (citing ECF No. 177  
 7 at 3 and ECF No. 179 at 27); ECF No. 335 at 2 (same).<sup>1</sup> However, unlike its previous attempt to  
 8 seal (ECF No. 258; ECF No. 279), Evoke points to specific, articulable facts explaining why its  
 9 motion, reply, and exhibits must have portions redacted. It identifies specific pages "containing  
 10 sensitive or proprietary business information" and another that "identifies Evoke's  
 11 compensation for creating the app and other IT services, which competitors could use to  
 12 compete with Evoke's pricing[.]" ECF No. 315 at 3.

13 Although there is a "strong presumption" in favor of access, there may be compelling  
 14 reasons to seal "business information that might harm a litigant's competitive standing." *Nixon v.*  
 15 *Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). Here, Evoke has articulated that portions of its  
 16 summary judgment motion and related documents contain trade secrets and/or sensitive and  
 17 confidential business information relating to both its business and that of ImageKeeper. Evoke  
 18 has further narrowly tailored its request to only the material which warrants secrecy by  
 19 selectively requesting to redact only the portions of the documents which reference this  
 20 confidential business information, even providing helpful charts to explain each of its proposed  
 21 redactions. *See id.*; ECF No. 335 at 3. For that reason, the court grants Evoke's motions to seal. *See*  
 22 *Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc.*, 2018 U.S. Dist. LEXIS 187819, at \*2, \*13  
 23 n.2, (D. Nev. Nov. 1, 2018) (finding compelling reasons to seal selective references to and exhibits

24 <sup>1</sup> Evoke seeks to redact parts of pages 6, 7, and 11 of the motion for summary judgment as well as pages  
 25 286 and 287 of Exhibit B (Hari Prasad Alla Deposition Transcript); Exhibit I of Exhibit F (QuickStart  
 26 Guide attached to Alla Declaration); and page 30 and Schedule 14 of Exhibit H (Excerpts of Pedigo  
 Expert Report). ECF No. 315 at 3. Evoke also seeks to redact portions of pages 3, 5, and 15 of its reply, as  
 well as transcript page 79 of Exhibit M (Transcript of Patterson Deposition).

1 describing defendant's confidential business information because it may harm defendant's  
2 competitive standing if revealed).

3 **B. Wright's Motions to Seal (ECF Nos. 318, 331)**

4 Wright moves to seal portions of its motion for summary judgment and Exhibit C to the  
5 Declaration of D. Stuart Bartow. ECF No. 318 at 1–2. Wright explains that “[t]he redacted  
6 portions of Wright's MSJ and Exhibit C to the Bartow Declaration contain discussions  
7 concerning the contents of Plaintiff's alleged trade secrets in this action, which Plaintiff has  
8 contended are sensitive and confidential and should remain out of the public record.” *Id.* at 2.  
9 Wright then argues that the information “is confidential, has not been disclosed to the public,  
10 and is protected internally within Plaintiff” but also “does not take a position on the merits of  
11 Plaintiff's contentions, but in an abundance of caution, seeks leave to file such information under  
12 seal.” *Id.* Similarly, and providing the same explanation, Wright seeks to redact portions of its  
13 reply regarding its motion for summary judgment, as well as Exhibit 1 to the Bartow Declaration.  
14 ECF No. 331 at 1–2.

15 The moving party must overcome the presumption of access by citing “compelling  
16 reasons supported by specific factual findings” to seal documents regarding a dispositive  
17 motion. *Kamakana*, 447 F.3d at 1178 (quoting *Foltz*, 331 F.3d at 1135 (citations omitted)). The  
18 reasons provided must be compelling enough to overcome the public's interest in access to those  
19 documents. *Id.* Here, although the redactions appear narrowly tailored because they only call for  
20 redactions, Wright does not provide a sufficient explanation for why these documents should be  
21 redacted in the first place. Although reasons have been provided, they are not compelling. The  
22 fact that the parties have agreed to keep information confidential in a protective order without  
23 more does not provide a compelling reason to seal a court record. *See Foltz*, 331 F.3d at 1138.  
24 Therefore, these motions are denied without prejudice.

1           **C. ImageKeeper’s Motions to Seal (ECF Nos. 322, 328)**

2           ImageKeeper seeks to redact portions of its opposition to Evoke’s motion for summary  
3 judgment and Exhibits N-BB and DD-FF attached thereto in support. ECF No. 328.

4 ImageKeeper also seeks to redact portions of its opposition to Wright’s motion for summary  
5 judgment and Exhibits A-M attached thereto in support. ECF No. 322.

6           In support of its motions, it argues that “[t]he information contained in the redacted  
7 portions of ImageKeeper’s Opposition [to Wright’s motion for summary judgment] and Exhibits  
8 A, C, L, and M is extremely confidential, has never been disclosed to the public, and is protected  
9 internally within ImageKeeper.” ECF No. 322 at 2–3; *see also* ECF No. 328 at 2 (making the same  
10 argument about ImageKeeper’s opposition to Evoke’s motion for summary judgment and  
11 Exhibits T, U, V, W, Y). ImageKeeper leans on the fact that “[t]he information and documents  
12 discussed in the redacted portions and contained in the exhibits have been designated, at the  
13 least, confidential.” ECF No. 322 at 2; ECF No. 328 at 2. Regarding exhibits O, P, Q, R, X, Z, N, S,  
14 EE, FF, AA, BB, B, D, E, G, H, F, I, J, and K, ImageKeeper argues only that Wright, Evoke, or  
15 third-party Colonial Claims “has designated that information and/or documents confidential.”  
16 ECF No. 322 at 3; ECF No. 328 at 3. For the same reasons as I deny Wright’s motions, I deny  
17 ImageKeeper’s, also without prejudice. Parties’ agreement to keep information confidential  
18 without more does not create a compelling reason for this court to grant a motion to seal.

19           **III. Conclusion**

20           IT IS THEREFORE ORDERED that Wright’s motions to seal [ECF No. 318; ECF No.  
21 331] are DENIED without prejudice, and ImageKeeper’s motions to seal [ECF No. 322; ECF  
22 No. 328] are DENIED without prejudice. By January 10, 2025, Wright and ImageKeeper are  
23 directed to either:

- 24           (1) file a motion requesting that the motions be unsealed in their entirety; or  
25           (2) file a motion to seal addressing the *Kamakana* standard in conjunction with the  
26           motions for summary judgment in accordance with the local rules.

1 IT IS FURTHER ORDERED that defendant Evoke's motions to seal [ECF No. 315; ECF  
2 No. 335] are GRANTED. The Clerk of Court is directed to maintain the seal on ECF Nos. 316,  
3 337.

4 Dated: December 20, 2024

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7 Cristina D. Silva  
8 United States District Judge  
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